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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC WILLIAMS,

Plaintiff,

vs.

BOSTON SCIENTIFIC CORPORATION,

Defendant.

Case No. 3:08-CV-01437-WHA

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

DATE: June 19, 2008
TIME: 11:00 A.M.
CTRM: 9
JUDGE: Hon. William H. Alsup

JURY TRIAL DEMANDED

The parties to the above-entitled action submit this Joint Case Management Statement.

JOINT CASE MANAGEMENT STATEMENT

1. Jurisdiction and Service

This action is one over which this Court has original jurisdiction under 28 U.S.C. § 1332.
This is a civil action where the amount in controversy exceeds the sum or value of \$75,000,

1 exclusive of interest and costs, and in between citizens of different states. No issues exist
2 regarding personal jurisdiction or venue and all parties have been served with process.

3 **2. Facts**

4 Plaintiff Eric Williams ("Williams") filed this action in California state court on January
5 30, 2008, against Defendants Boston Scientific Corporation ("BSC"), James Tobin, William
6 Roskopf, Jennifer Hegner, and Thomas O'Connell. BSC is a Massachusetts corporation
7 headquartered in Natick, Massachusetts. Defendant Tobin is a resident of Massachusetts and
8 defendants Roskopf, Hegner, and O'Connell are residents of California.

9 Plaintiff alleges that Defendant retaliated against Plaintiff by terminating his employment
10 after he notified executives of alleged breaches of the company's own procedures for reviewing
11 promotional materials (the "PSST Process"). Plaintiff acknowledges that his termination
12 occurred in connection with a legitimate reduction in force but contends that defendants exploited
13 the occasion of the legitimate reduction in force to retaliate against him. Plaintiff also asserts that
14 Defendants retaliated against him by failing to promote him prior to his termination.

15 The complaint alleges claims for wrongful termination in violation of public policy,
16 breach of implied contract, and breach of the implied covenant of good faith and fair dealing.

17 Defendants removed this action to federal court on March 13, 2008, contending that
18 Defendants Roskopf, Hegner, and O'Connell were fraudulently joined and that diversity
19 jurisdiction is therefore proper. Defendants, James Tobin, William R. Roskopf, Jennifer A.
20 Hegner and Thomas J. O'Connell, Jr., were dismissed by Order of the Court dated May 13, 2008.

21 BSC's Answer to Williams' Complaint is due on or before June 16, 2008. BSC will
22 respond in detail denying that it engaged in any wrongdoing and denying that it has any liability
23 to Plaintiff.

24 **3. Legal Issues**

25 Plaintiff's causes of action are as follows:

26 First Cause of Action: Wrongful Termination in Violation of Public Policy (Tameny v.
27 Atlantic Richfield Co., 27 Cal. 3d 167 (1980)). Plaintiff alleges that, in reporting possible errors
28 in the PSST Process to BSC executives and management, he reported acts that constituted

1 violations of various California and federal statutes and regulations, including: (i) the Sarbanes-
2 Oxley Act (18 U.S.C. 1514A(a)(1) and (2)); (ii) the California Health and Safety Code (Sections
3 110390, 110398, 111295); (iii) the California Labor Code (Section 1102.5); and (iv) the Federal
4 Food, Drug, and Cosmetic Act. Plaintiff alleges that these federal and state statutes create
5 fundamental and substantial public policies of the State of California that support the common-
6 law claim for wrongful termination in violation of public policy. Plaintiff further alleges that
7 Defendant, in failing to promote Plaintiff and in terminating Plaintiff in retaliation for his
8 reporting on the PSST Process, violated the fundamental and substantial public policy of the State
9 of California reflected in various California and federal statutes.

10 Second Cause of Action: Breach of Implied-in-Fact Contract. Plaintiff alleges that he and
11 BSC entered into an implied-in-fact contract that included within its terms a guarantee that BSC
12 and/or its agents and employees would not retaliate against Plaintiff because he made a good-faith
13 report, or assisted with or cooperated in an investigation of a report, whether such reports were
14 made or investigated by BSC, a government, or a government official. Plaintiff claims that he
15 performed all the terms, conditions, covenants, and promises on his part to be performed under
16 his implied-in-fact contract with BSC. Plaintiff further claims that BSC refused to promote
17 Plaintiff and terminated him in retaliation for his disclosures regarding the PSST Process, and
18 thereby breached its implied-in-fact contract with Plaintiff.

19 Third Cause of Action: Breach of Implied Covenant of Good Faith and Fair Dealing.
20 Plaintiff claims that the alleged implied-in-fact contract between Plaintiff and BSC contained an
21 implied covenant of good faith and fair dealing, which obligated Defendant to perform the terms
22 and conditions of the contract fairly and in good faith and to refrain from doing any act that
23 would prevent or impede Plaintiff from performing any or all of the conditions of the contract that
24 he agreed to perform, or any act that would deprive Plaintiff of the benefits of the contract.
25 Plaintiff claims that he performed all of the terms, conditions, covenants, and promises on his part
26 to be performed under his implied-in-fact contract with Defendant. Plaintiff further alleges that
27 Defendant refused to promote Plaintiff and terminated Plaintiff in retaliation for his disclosures
28 regarding the PSST Process, and thereby breached the implied covenant of good faith and fair

1 dealing contained in its contract with Plaintiff.

2 **4. Motions**

3 Plaintiff's Motion to Remand: Plaintiff filed a Motion to Remand on April 10, 2008.

4 Plaintiff's motion was denied by Order dated May 13, 2008.

5 Defendants' Motion to Stay: Defendants filed a Motion to Stay pursuant to Federal Rule
6 of Civil Procedure 12(b)(1) pending Plaintiff's exhaustion of administrative remedies under the
7 Sarbanes-Oxley Act on March 28, 2008. Defendants' motion was denied by Order dated May
8 13, 2008.

9 Defendants' Motion to Dismiss: Defendants filed a Motion to Dismiss individual
10 defendants, Tobin, Roskopf, Hegner and O'Connell, for failure to state a claim pursuant to
11 Federal Rule of Civil Procedure 12(b)(6) on March 28, 2008. Defendants' motion to dismiss
12 defendants Tobin, Roskopf, Hegner, and O'Connell was granted by Order dated May 13, 2008.

13 Stipulation to Extend Defendant's Deadline to File an Answer to Plaintiff's Complaint:
14 On May 23, 2008, Plaintiff and Defendant BSC (the only remaining defendant), filed a
15 Stipulation to extend the deadline for BSC to file its Answer to Plaintiff's complaint to June 16,
16 2008. The Stipulation was granted on May 27, 2008.

17 **5. Amendment of Pleadings**

18 Plaintiff anticipates no amendments to its pleadings.

19 BSC will file its Answer to Plaintiff's complaint by June 16, 2008.

20 **6. Evidence Preservation**

21 Plaintiff and BSC recognize the importance of their respective obligations to preserve all
22 evidence, electronic and otherwise, that relates in any way to the subject matters of this action,
23 regardless of where located. Parties are taking all necessary steps to preserve documents and
24 evidence that relate to the matters of this action.

25 **7. Disclosures**

26 The parties agree to exchange disclosures as required by Rule 26(a)(1) of the Federal
27 Rules of Civil Procedure ("Initial Disclosures"). Parties will serve their Initial Disclosures on or
28 before June 11, 2008.

1 **8. Discovery Plan**

2 Pursuant to Federal Rule of Civil Procedure (“FRCP”) 26(f), the Parties state the
3 following views and proposals on:

- 4 a. What changes in timing, form, or requirement for disclosures under FRCP 26(a),
5 including statement of when initial disclosures were made or will be made:

6 The parties agree to exchange disclosures as required by Fed. R. Civ. P. 26(a)(1) in
7 accordance with the Federal Rules of Civil Procedure (“Initial Disclosures”). BSC will serve its
8 Initial Disclosures on or before June 11, 2008, and Plaintiff will serve his Initial Disclosures on or
9 before June 11, 2008.

- 10 b. The subjects on which discovery may be needed, when discovery should be
11 completed, and whether discovery should be conducted in phases or be limited to or
12 focused on particular issues:

13 Discovery is needed on: whether and to what extent BSC took adverse action against
14 Plaintiff because of Plaintiff’s reports regarding the PSST process; and whether and to what
15 extent BSC retaliated against Plaintiff for his disclosures related to the PSST Process. Additional
16 discovery may be needed by Plaintiff to establish his prima facie case and any rebuttal to BSC’s
17 defenses thereto, and by BSC to establish its defenses.

18 All discovery, including depositions of expert witnesses, must be completed by June 30,
19 2009.

20 Pursuant to Federal Rule of Civil Procedure 16(b) and Civil L.R. 26-2, a discovery request
21 or stipulation that calls for responses or depositions after the discovery cut-off date are not
22 enforceable except by order of the Court and upon a showing of good cause.

23 Pursuant to Civil L.R. 26-2, no motions to compel discovery may be filed later than 7
24 days after the discovery cut-off date.

- 25 c. Any issues about disclosure or discovery of electronically stored information,
26 including the form or forms in which it should be produced:

27 The parties have conferred regarding the disclosure and discovery of electronically stored
28 information, including the form or forms in which it should be produced. The parties do not

1 anticipate any issues relating to the preservation of electronic information. The parties have
2 agreed to preserve all electronic communications and information covered by Rule 26 of the
3 Federal Rules of Civil Procedure. The parties have agreed to produce electronically stored
4 information in native format with all metadata preserved, to the fullest extent possible.

- 5 d. Any issues about claims of privilege or of protection as trial-preparation materials,
6 including – if the parties agree on a procedure to assert these claims after production –
7 whether to ask the court to include their agreement in an order:

8 The parties propose that should either party receive what appears to be work product or
9 privileged materials from the opposing party, the receiving party will contact the producing party
10 as soon as reasonably possible to ascertain the character of the materials in question. Should the
11 producing party explain that the materials in question are work product or privilege-protected, the
12 receiving party shall return the materials to the producing party as soon as reasonably possible,
13 and may not copy or otherwise use any information from such materials at any state in the instant
14 or any subsequent action.

- 15 e. What changes should be made in the limitations on discovery imposed under the
16 FRCP or by local rule, and what other limitations should be imposed:

17 None other than as agreed pursuant to this Case Management Statement.

- 18 f. Any other orders that the court should issue under FRCP 26(c) or 16(b) and (c).

19 None.

20 **9. Class Actions**

21 Not Applicable.

22 **10. Related Cases**

23 On November 12, 2007, Plaintiff filed a Complaint for Relief Under the Corporate and
24 Criminal Fraud Accountability Act of 2002, 18 U.S.C. § 1514A before the Department of Labor,
25 Occupational Safety and Health Administration (“OSHA”) against BSC and its Chief Executive
26 Officer, James Tobin. BSC and Tobin issued its response in a letter to OSHA dated January 10,
27 2008. On March 8, 2008, Plaintiff filed an opposition to BSC and Tobin’s response statement.
28 On April 20, 2008, BSC and Tobin filed their reply to Plaintiff’s opposition statement. To date,

1 OSHA has conducted no hearings and has issued no orders related to Plaintiff's Complaint.

2 There are no other related cases or proceedings pending before another judge of this or
3 any other court.

4 **11. Relief**

5 For each of his causes of action, Plaintiff seeks: compensatory damages, including lost
6 wages and employment benefits according to proof; mental and emotional distress damages
7 according to proof at trial; an award of interest, including pre-judgment interest, at the legal rate;
8 an award of attorney's fees; costs of suit incurred; and other and further relief as the Court deems
9 necessary and appropriate. For his First Cause of Action, Plaintiff additionally seeks: special and
10 general damages, according to proof; and exemplary and punitive damages, according to proof.
11 For his Second and Third Causes of Action, Plaintiff additionally seeks: general damages, special
12 damages, actual damages, consequential damages, and incidental damages according to proof.

13 Plaintiff will retain an economist calculate the total monetary value of the relief sought.

14 **12. Settlement and ADR**

15 Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case,
16 including compliance with ADR L.R. 3-5 and a description of key discovery or motions
17 necessary to position the parties to negotiate a resolution.

18 The parties are in agreement to conduct a private mediation.

19 **13. Consent to Magistrate Judge For All Purposes**

20 Whether all parties will consent to have a magistrate judge conduct all further proceedings
21 including trial and entry of judgment.

22 The parties consent to magistrate judge solely for the purposes of resolving discovery
23 disputes.

24 **14. Other References**

25 Whether the case is suitable for reference to binding arbitration, a special master, or the
26 Judicial Panel on Multidistrict Litigation.

27 The parties do not believe this case is suitable for the above.
28

15. Narrowing of Issues

Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.

None at this time. The parties agree to meet and confer post-discovery to discuss joint stipulations of fact and/or law.

16. Expedited Schedule

Whether this case can be handled on an expedited basis with streamlined procedures.

The parties have consented to the case management schedule set forth believe and believe that is the appropriate timeline.

17. Scheduling

Depositions – The parties will exchange proposed deposition lists with requested amount of time/days required for each by July 1, 2008, then parties will meet and confer regarding the scheduling of depositions

Non-Expert Discovery Completion – March 2, 2009 (all non-expert discovery will be complete and nothing further can be propounded and no further depositions can be taken).

Experts – April 1, 2009 (plaintiff), May 1, 2009 (defendant), May 22, 2009 (plaintiff rebuttal). Expert depositions to be completed by June 30, 2009.

Dispositive motions – August 20, 2009 - initial filing; September 3, 2009 – response; September 10, 2009 – reply; September 24, 2009 – proposed hearing date.

Pretrial conference – TBD, as scheduled by the Court.

Trial – TBD, as scheduled by the Court.

18. Trial

The case will be tried to a jury. The expected length of the trial is 7 days.

19. Disclosure of Non-party Interested Entities or Persons

Has each party filed the “Certification of Interested Entities or Persons” required by Civil Local Rule 3-16? Each party must restate its certification by identifying any persons, firms, partnerships, corporations, or other entities known by the party to have either: (i) a financial

1 interest in the subject matter in controversy or in any party to the proceedings; or (ii) any other
2 kind of interest that could be substantially affected by the outcome of the proceeding.

3 Plaintiff will file his certificates on or before July 1, 2008. Plaintiff states that there are no
4 interested entities or persons that meet the requirements of LR 3-16. BSC filed its certificate on
5 March 13, 2008.

6 **20. Other Matters**

7 Such other matters as may facilitate the just, speedy and inexpensive disposition of this
8 matter.

9 None at this time.


10
11 Dated: June __, 2008

MORGAN, LEWIS & BOCKIUS LLP

12 By: _____
13 Cecily A. Waterman
14 Attorneys for Defendant
BOSTON SCIENTIFIC CORPORATION

15 Dated: June 10, 2008

THE EMPLOYMENT LAW GROUP, P.C.

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17 By:  _____
18 David Scher
19 Attorneys for Plaintiff
20 ERIC WILLIAMS
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